



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.06.2020

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.R.P. (MD) .No.497 of 2020

and

CM.P. (MD) .No.3115 of 2020

1.Karnan
2.Chinnathai (died)
3.Periyathai
4.Paruvatham ... Petitioners/Respondents/Petitioners/Defendants

Vs.

Chandrakanth ... Respondent/Petitioner/Petitioner/Plaintiff

PRAYER: Civil Revision Case is filed under Article 227 of Constitution of India as against the order dated 11.02.2020 passed in I.A.No.272 of 2016 in I.A.No.256 of 2015 in O.S.No.237 of 2011 on the file of the learned Principal District Munsif Court, Veda sandur.

For Petitioners : Mr.V.Muthumani

O R D E R

The respondent herein who is the plaintiff in a suit in O.S.No.237 of 2011 on the file of the Principal District Munsif, Veda sandur for declaration. The petitioners herein are the defendants in the said suit.

2.The petitioners herein filed an Interlocutory Application in I.A.No.256 of 2015 to appoint an Advocate Commissioner to note down the physical features of the suit pathway. After hearing the case, the learned District Munsif Cum Judicial Magistrate, Veda sandur allowed the application. Accordingly, one Mr.V.Rajarajacholan was appointed as an Advocate Commissioner and he inspected the property and filed a report. Subsequently, the respondent also filed an application in I.A.No.272 of 2016 to re-issue the warrant to note down certain physical features which was omitted in the earlier report. The said application was vehemently contested by the present petitioners herein.



3.The learned counsel for the petitioners submitted that already an Advocate Commissioner was appointed in I.A.No.256 of 2015 by the Court below and the Advocate Commissioner has substantially complied with a direction given by the Court below and filed the report. Now, the respondent filed an application in I.A.No.272 of 2016 to reissue the warrant where in the Court below has appointed a new Advocate Commissioner to note down the physical features in the suit property. The learned counsel for the petitioners further submitted that I.A.No.272 of 2016 was filed only to protract the case and therefore, it is not necessary to appoint a new Advocate Commissioner. If the new Advocate Commissioner inspect the property, certain discrepancies would be possible. Hence, the learned counsel for the petitioners prays to set aside the order passed in I.A.No.272 of 2016.

4.Heard the learned counsel appearing for the petitioners and perused the materials available on record.

5.On a perusal of the order passed by the Principal District Munsif, Vedasandur in I.A.No.256 of 2015, it is seen that the Court below has appointed one Mr.V.Rajarajacholan as Advocate Commissioner to inspect the suit property and directed him to file the report. Accordingly, the said Advocate Commissioner Mr.V.Rajarajacholan after inspecting the suit property filed his report. Subsequently, the respondent herein filed an application in I.A.No.272 of 2016 to appoint an Advocate Commissioner to inspect the petition mentioned property. The said application was allowed by the Court below. On seeing the order in I.A.No.272 of 2016, one Mr.Thangavel Muniappan has been appointed as Advocate Commissioner wherein the learned District Munsif, Vedasandur has not stated any reason as to why he has appointed a new Advocate Commissioner. If the Court below is having any doubt, the learned Principal District Munsif could have reissued the warrant to the same Advocate Commissioner for further clarification. Unless the Court below set aside the report filed by the earlier Advocate Commissioner, the Court can not appoint a new Advocate Commissioner to inspect the very same property.

6.Therefore, this Court is of the view that the order passed in I.A.No.272 of 2016 is modified to the effect that the very same earlier Advocate Commissioner Mr.V.Rajarajacholan is appointed as an Advocate Commissioner in I.A.No.272 of 2016 instead of Advocate Mr.Thangavel Muniappan. The Advocate Commissioner Mr.V.Rajarajacholan who was appointed earlier in I.A.No.256 of 2015 is directed to inspect the petition mentioned property with help of the V.A.O and Taluk Surveyor in the presence of both parties and their counsel and file the report after giving due opportunities to both parties. In case, if any dispute arises, on any particular aspects, the Advocate Commissioner is directed to take photographs of the physical features of the petition mentioned property and submit the same along with the report and plan.



7. With the above modification, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (AD II)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

msa

To
The Principal District Munsif
Vedasandur

Copy to:
The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.R.SENTHILKUMAR, Advocate (SR-13023[F] dated 02/06/2020)

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